

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: Fairfield Sentry Limited, et al., Debtors in Foreign Proceedings.	Chapter 15 Case Case No. 10-13164 (SMB) Jointly Administered
Fairfield Sentry Limited (In Liquidation), et al., acting by and through the Foreign Representatives thereof, Plaintiffs, -against- Theodoor GGC Amsterdam, et al., Defendants.	Adv. Pro. No. 10-03496 (SMB) Administratively Consolidated
This declaration applies to the Adversary Proceedings listed on Exhibit A hereto	

DECLARATION OF ANDREW PULLINGER

I, ANDREW PULLINGER, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am a litigation partner at the Cayman Islands office of Campbells, a firm of attorneys that practices from premises located at Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands. Campbells is a leading full service offshore law firm with offices in the Cayman Islands, the British Virgin Islands and Hong Kong that provides comprehensive litigation and corporate advice and services to clients in respect of Cayman

Islands, and British Virgin Islands law. The firm's litigation practice is widely recognized for its expertise in investment funds disputes and cross-border insolvency.

2. I was admitted to practice as a legal practitioner of the Supreme Court of Western Australia in 2007, as a solicitor of the Senior Courts of England and Wales in 2011, and as an attorney of the Grand Court of the Cayman Islands in 2014. Prior to joining Campbells in January 2014, I practiced in the area of dispute resolution (primarily by litigation or international arbitration) within the Perth, Australia and London, England offices of the international law firm DLA Piper. My full curriculum vitae is attached as **Exhibit B** to this declaration.

3. Since joining Campbells, I have acted for Bank of Bermuda (Cayman) Ltd. ("BBCL") and HSBC Securities Services (Luxembourg) SA ("HSSL"), both of which are HSBC group entities, in defence of the claims brought against them by Primeo Fund (in Official Liquidation) ("Primeo"), a Cayman fund, in the Grand Court of the Cayman Islands (case number FSD 30 of 2013) ("*Primeo*" or the "*Primeo* action"). I became a partner of Campbells on April 1, 2016 and since then have been the lead partner coordinating the defence of BBCL and HSSL against Primeo's claims. The *Primeo* action went to trial before the Grand Court of the Cayman Islands between November 2016 and February 2017. Judgment was reserved following trial and, as of the date of this declaration, has not yet been delivered.

4. I understand that on April 6, 2017, the Liquidators and Foreign Representatives of Fairfield Sentry Limited, Fairfield Sigma Limited, and Fairfield Lambda Limited (the "Fairfield Liquidators") filed an opposition to the motion to dismiss the above-captioned action filed by HSSL, HSBC Private Bank (Suisse), S.A., and HSBC Bank USA, N.A. (collectively, the "HSBC Defendants"). See ECF No. 1433 (the "Opposition"). The Opposition is supported by a declaration of David J. Molton of the law firm Brown Rudnick LLP, counsel for the Fairfield

Liquidators, dated April 6, 2017 (the “Molton Declaration”). The Molton Declaration attaches, as Exhibits B - D, revised proposed Third Amended Complaints by the above Fairfield entities against the HSBC Defendants, which Mr. Molton states in each case contain “certain additional factual allegations (in red line) based on the testimony and evidence provided in [*Primeo*]...”.

5. The Opposition and revised proposed Third Amended Complaints quote selectively from the *Primeo* trial transcript. In order to provide a clearer understanding of the relevant context, I have set forth below further information relating to the background, allegations, and trial in the *Primeo* action.

Background of the *Primeo* Action

6. In broad terms, the *Primeo* action concerned a claim by Primeo, brought by its joint official liquidators (the “Primeo Liquidators”), alleging breaches by BBCL¹ and HSSL of their contractual obligations to Primeo in their respective capacities as the administrator and custodian.

7. Between 1996 and December 2008, Primeo invested most of its assets with Bernard L Madoff Investment Securities LLC (“BLMIS”). After the failure of BLMIS, the Primeo Liquidators brought the *Primeo* action, alleging that BBCL and HSSL had breached their obligations to Primeo under the terms of Administration and Custodian Agreements that Primeo entered into with BBCL and HSSL, respectively, and seeking damages, including for alleged loss of profit, in excess of US\$2 billion.

¹ BBCL is not one of the HSBC Defendants.

Evolution of the Primeo Liquidators' Statement of Claim

8. On February 20, 2013, the Primeo Liquidators served their original Statement of Claim on BBCL and HSSL. This first Statement of Claim alleged that BBCL (qua Administrator) and HSSL (qua Custodian) were aware of certain alleged “unusual features” or “red flags” regarding BLMIS that it was alleged should have put them on notice of potential misconduct. The Statement of Claim further alleged that reports prepared by KPMG in 2005 and 2008 provided notice to BBCL and HSSL of BLMIS’ fraud.

9. During the *Primeo* action, BBCL and HSSL together discovered more than 80,000 documents with a total page count of almost 5.5 million. Primeo discovered more than 20,000 documents, some of which were sourced by the Primeo Liquidators from third parties including KPMG (in connection with the two fraud and operational risk reviews that HSBC requested in respect of BLMIS in 2005 and 2008) and the BLMIS Trustee.

10. The Primeo Liquidators went on substantively to amend their Statement of Claim three times over the next two years. By the fourth Statement of Claim, many of the “red flags” relied upon in the First Statement of Claim were abandoned entirely. Finally, on March 21, 2016—over three years after the original filing—the Honourable Mr. Justice Andrew Jones QC, the judge presiding over the *Primeo* action, ordered the Primeo Liquidators to strike from the Statement of Claim certain allegations relating to HSSL’s alleged fiduciary obligations to Primeo and HSSL’s alleged obligations with respect to the handling of cash transferred by or on behalf of Primeo. It was upon this fifth Statement of Claim that the *Primeo* trial proceeded. Thus, before the *Primeo* trial even began, many of the Primeo Liquidators’ allegations against BBCL and HSSL relating to BLMIS red flags had fallen away.

Primeo Trial

11. The Grand Court of the Cayman Islands devoted over 46 hearing days to the *Primeo* action between November 2016 and February 2017. The trial was complex and lengthy. The parties submitted more than 400 pages of written opening submissions that were supplemented by five days of oral opening submissions at the outset of the trial. Following the close of evidence, the parties submitted more than 1,100 pages of written closing submissions in advance of eight days of oral closing submissions.

12. The trial also involved live testimony from many factual and expert witnesses. Specifically, prior to trial, 11 fact witnesses made a total of 20 witness statements, which, per Cayman legal procedure, served as their primary testimony. The witnesses were then cross-examined based on those prior statements in live testimony over 17 hearing days. The Liquidators' revised proposed Third Amended Complaints quote primarily not from witness testimony, but from the *Primeo* Liquidators' opening and closing submissions, which are not evidence under Cayman law. Where the Liquidators do refer to witness testimony, they rely not on witness statements, but solely on testimony at trial.

Executed on 8 June 2017 at Grand Cayman.



ANDREW PULLINGER

EXHIBIT A

Adv. Pro. No.	Defendant Name
10-03630	HSBC Securities Services (Luxembourg) S.A.
10-03633	HSBC Private Bank (Suisse) S.A. Personal
10-03634	HSBC Bank USA, N.A.
10-03635	“HSBC”
10-03636	“HSBC”
11-01594	HSBC Trust Company AG (f/k/a FS/HSBC Guyerzeller Zurich)
12-01270	HSBC Latin America Holdings (UK) Limited (successor-in-interest to HSBC Securities (Panama) S.A.)

EXHIBIT B

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ANDREW PULLINGER

Partner

Andrew specialises in commercial litigation, international arbitration and dispute resolution. He has extensive experience acting for clients in relation to high-value and complex disputes, typically with a cross-border element. Andrew previously practised in both London and Australia with a major international firm, and holds postgraduate qualifications in both applied finance and international dispute resolution.

Prior to joining Campbells in January 2014, Andrew practised at DLA Piper in both Australia (2006 – 2009) and London (2009 – 2013). In London, Andrew specialised in international dispute resolution with a particular focus on international arbitration. Andrew has experience litigating in jurisdictions throughout the world, as well as conducting institutional and ad hoc arbitrations under a variety of different rules. He has extensive experience acting for clients in complex, high value disputes, often with a significant cross-border element. His clients have included foreign governments, major banks and multinationals spanning a number of sectors.

QUALIFICATIONS AND ADMISSIONS:

- Bachelor of Laws (LLB) and Bachelor of Commerce (B.Com), University of Western Australia, 2005
- Graduate Diploma (Applied Finance and Investment), Financial Services Institute of Australasia, 2008
- Graduate Diploma (International Dispute Resolution, International Arbitration major), Queen Mary, University of London, 2013
- Barrister and Solicitor of the Supreme Court of Western Australia, 2007 (non-practising)
- Practitioner of the High Court of Australia, 2008 (non-practising)
- Solicitor of the Senior Courts of England and Wales, 2011
- Attorney-at-Law, Cayman Islands, 2014

PRIOR CAREER HISTORY:

- DLA Piper UK, London, 2009 – 2013
- DLA Piper Australia, Perth, 2006 – 2009